

In the United States Court of Federal Claims

MICHAEL LEON STOVALL, *pro se*,

*

Plaintiff,

*

v.

*

No. 07-104C

UNITED STATES,

*

(Filed Mar. 16, 2007)

Defendant.

*

OPINION AND ORDER

Plaintiff, appearing *pro se*, filed a complaint in the United States Court of Federal Claims on February 13, 2007. Plaintiff filed a motion to proceed *in forma pauperis* on February 28, 2007. That motion is granted solely for the purpose of filing this lawsuit.

Plaintiff alleges “public corruption” and identity theft relating to his social security number, along with a misappropriation of grant money that allegedly was paid to the William E. Donaldson Correctional Facility on plaintiff’s behalf for completing courses at a community college for which he either did not complete or was never registered. Plaintiff believes that, in addition to these wrongs, he has been denied his rights under the Tenth and Fourteenth Amendments.

It is the court's obligation to assure itself that it has jurisdiction over a complaint before addressing the merits. Hambsch v. United States, 857 F.2d 763, 765 (Fed. Cir. 1988), cert. denied, 490 U.S. 1054 (1989).

Background

Plaintiff alleges that he was incarcerated at the William E. Donaldson Correctional Facility 1/ (the “Donaldson Facility”) for the duration of the events alleged in the complaint, which began in spring 1995 and ended in late 2006. However, plaintiff later alleges that he

1/ While not explicitly stated in the complaint, several documents attached to the complaint were addressed from the Donaldson Facility in Bessemer, Alabama.

was transported and housed at a facility in Nashville, Tennessee, for approximately seven months beginning in March 1995. The court assumes that he was returned to the Donaldson Facility after his tenure in Tennessee.

Beginning in 1995, plaintiff alleges that officials at the Donaldson facility enrolled him in educational courses conducted by Lawson State Community College that were offered at the prison. Plaintiff was awarded certificates of completion in three areas: carpentry, barbering, and electrical. Plaintiff alleges that he did not complete any of the courses, as evidenced by the fact that he temporarily was transferred to the facility in Tennessee during the course periods for which he was awarded certificates of completion.

Plaintiff additionally alleges that he was “given” a total of twenty-five courses from 1995 through 2003, all of which were without a “Course Substitution Form.” While it is difficult to ascertain exactly what plaintiff alleges took place, the result is that plaintiff claims that his social security number was given improperly to state and federal institutions. These institutions then paid educational grant money to both Lawson State Community College and the Donaldson Facility for educational courses in which plaintiff apparently was improperly enrolled or never completed.

Plaintiff additionally alleges that he gave notice of these actions to the Attorney General of the United States, the Attorney General of Alabama, and the United States Department of Education and that they declined to investigate. On this basis plaintiff maintains that he has been the victim of identity theft and misappropriation and has been denied his constitutional rights under the Tenth Amendment and the Due Process Clause of the Fourteenth Amendment.

Discussion

1. Standard of Review

Complaints filed by *pro se* litigants are held “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). Nevertheless, “[t]he fact that [a plaintiff] acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be.” *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). *Pro se* status “does not relieve a *pro se* plaintiff from meeting jurisdictional requirements.” *Bernard v. United States*, 59 Fed. Cl. 497, 499 (2004), *aff’d*, 98 Fed. App’x 860 (Fed. Cir. 2004) (unpubl. table); *see also* *Ledford v. United States*, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (affirming dismissal of *pro se* plaintiff’s complaint seeking unpaid tax refund). This is certainly the case when plaintiff attempts to invoke the jurisdiction of the Court of Federal Claims, for the Tucker Act “confers

jurisdiction upon the Court of Federal Claims over the specified categories of actions brought against the United States, and . . . waives the Government's sovereign immunity for those actions.” Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Consequently, the Tucker Act must be construed strictly in favor of the Government. See Dep’t of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999); Shoshone Indian Tribe v. United States, 364 F.3d 1339, 1346 (Fed. Cir. 2004). As the requirements of subject matter jurisdiction are so “exacting[,] A party’s failure or inability to procure counsel therefore does not alter who carries the burden nor how that burden is met.” Carter v. United States, 62 Fed. Cl. 66, 69 (2004).

2. Jurisdiction

Jurisdiction must be established before the court may proceed to the merits of a case. Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 88-89 (1998). “A court may and should raise the question of its jurisdiction *sua sponte* at any time” Arctic Corner, Inc. v. United States, 845 F.2d 999, 1000 (Fed. Cir. 1988). As it is obvious that this complaint raises serious questions about the court’s jurisdiction to hear this case, the court reviews plaintiff’s complaint to assure that jurisdiction is present.

Under the Tucker Act, 28 U.S.C. § 1491(a)(1) (2000), the court is authorized to “render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” This jurisdiction extends only to claims for money damages and must be strictly construed. See United States v. Testan, 424 U.S. 392, 398 (1976). “[J]urisdiction under the Tucker Act requires the litigant to identify a substantive right for money damages against the United States separate from the Tucker Act.” Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004).

3. Plaintiff’s claims

Plaintiff’s case is captioned as a suit against various individuals in both their individual and official capacities. One of the named defendants, Troy King, is the Attorney General of Alabama. The Tucker Act authorizes the court to render judgment only against the United States. 28 U.S.C. § 1491(a)(1); United States v. Sherwood, 312 U.S. 584, 588-89 (1941). The court has no jurisdiction over plaintiff’s claims against any party other than the United States. While plaintiff has not captioned his case against the United States, the court gives latitude to his status as a *pro se* litigant; therefore, because the three other named party

defendants are agents of the United States, 2/ the court examines the complaint to see if it may be construed to assert a valid claim against the United States.

In his statement of jurisdiction, plaintiff alleges that the court has jurisdiction to hear his claims under 42 U.S.C. §§ 1331(a) and 1343 and 28 U.S.C. § 1367. No statutes currently in force are codified at either section 1331 or 1343 of title 42. Plaintiff cites 28 U.S.C. § 1367 for the proposition that the court has jurisdiction to hear his “state law tort claims” under supplemental jurisdiction. While plaintiff is correct that this statute deals with supplemental jurisdiction, it applies only to the federal district courts. 28 U.S.C. § 1367 (providing that “the district courts shall have supplemental jurisdiction”). While the court declines to address whether it has jurisdiction over ancillary and pendant claims, it is clear that plaintiff’s cited statute does not provide the court with jurisdiction.

As plaintiff notes in the jurisdictional section of his complaint, most of the allegations, if they give rise to any claim, give rise to tort claims under state law. All of plaintiff’s allegations concerning actions by federal officials are, at best, tort claims as well. The Tucker Act specifically excludes tort claims from the jurisdiction of the United States Court of Federal Claims. See *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (stating that Court of Federal Claims “lacks jurisdiction over tort claims against the United States”); *LeBlanc v. United States*, 50 F.3d 1025, 1030 (Fed. Cir. 1995) (holding that where the issues are tort claims, “the Court of Federal Claims has no jurisdiction”). The court lacks jurisdiction over plaintiff’s claims sounding in tort.

Plaintiff also alleges that certain actions attributable to the Federal Government violated his rights under the Tenth and Fourteenth Amendments to the United States Constitution. The Tenth Amendment provides that: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. The Tenth Amendment cannot be read to mandate the payment of money for its violation. Therefore, it provides no basis of jurisdiction under the Tucker Act. See *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (“Not every claim invoking the Constitution . . . is cognizable under the Tucker Act. . . . [T]he claimant must demonstrate that the source of substantive law he relies upon ‘can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.’”) (citing *Testan*, 424 U.S. at 400). The law is well settled that the Fourteenth Amendment similarly is not a money mandating provision. See e.g., *LeBlanc*, 50 F.3d at

2/ Alberto Gonzales is the Attorney General of the United States; Gilbert C. Humes and Jeff Gibbons are alleged to be officials in the United States Department of Education.

1028 (citing Carruth v. United States, 627 F.2d 1068, 1081 (Ct. Cl. 1980)). Because neither the Tenth nor the Fourteenth Amendment is a money-mandating constitutional provision, the court does not have jurisdiction over plaintiff's claims for a constitutional violation.

Despite plaintiff's failure to caption his complaint against the United States and his admission that most of his claims were based on state tort law, the court nonetheless has scoured the complaint for a basis of jurisdiction. Having found none, plaintiff's complaint must be dismissed.

Conclusion

Accordingly, based on the foregoing,

IT IS SO ORDERED, as follows:

1. Plaintiff's motion to proceed *in forma pauperis* is granted for the limited purpose of filing this lawsuit only.
2. The Clerk of the Court shall dismiss the complaint without prejudice for lack of subject matter jurisdiction.

No costs.

Christine Odell Cook Miller
Judge